HANDBOOK OF THE LAW OF TRUSTS, by George Gleason Bogert, Professor of Law in the Cornell University College of Law. (St. Paul, Minn.: West Publishing Co., 1921.)

The author of this volume has compressed the law of trusts within the space of less than six hundred pages, probably one-half of which are occupied by footnotes—and yet nothing essential to a well-rounded treatment seems omitted. His industry in searching out the local peculiarities of the law of trusts in the various States, including statutory provisions, is noteworthy. The citation of authorities is quite full, but with no evidence of padding. Articles from law journals, treating of narrower or controverted questions, have been industriously collected, and add much to the resources of the volume.

In the author's quite scholarly treatment of the charitable trust, the statutory recognition of these trusts, in broadest terms, in Virginia, is not noticed—the Virginia Code of 1904 being the latest citation. But this legislation is too recent (see Virginia Code 1919, Sec. 587) to justify mention of the omission, except to utilize the occasion to give wide publicity to this long delayed legislation. There is probably no precedent in the reports, from the Year Books down, so thoroughly discredited, as based on erroneous principles, and so unfortunate in its after-results, and yet so blindly followed in Virginia, as the case of *Gallego* v. *Attorney General*,[1] decided in 1832, in which the Virginia court declined to follow the lead of the U. S. Supreme Court in rejecting the doctrine of *Baptist Ass'n* v. *Hart*,[2]— a precedent which, together with its numerous progeny, is now happily relegated to the dustheap.

Professor Bogert is to be commended for rejecting the classification of implied trusts adopted by Lewin and followed by Perry. To confine the term 'implied' trust to those trusts created by precatory or ambiguous language, and to exclude resulting and constructive trusts from that classification, is both illogical and confusing. A trust created by precatory words can with no more justification be termed implied than may a contract judicially deduced from ambiguous written language of the parties, be designated an implied contract. In either case the party or parties have expressed their intention in words which the court has interpreted as constituting, in the one case a trust, and in the other a contract—not a trust or contract by implication of law, but one created by express language. The chief objection, however, to the rejected classification is, not that it includes trusts created by ambiguous language, but that it excludes resulting and constructive trusts—both erected by implication of law—and forcing these into two other separate groupings, thus producing unnecessary confusion of judicial and professional thought.

The doctrine stated without qualification (p. 511) that in order to occupy the highly favored position of a *bona fide* purchaser for value, the purchaser must have secured the legal title before receiving notice, is the accepted form in which the rule is generally stated, but the

[1] 3 Leigh 450.
[2] 4 Wheat. 1.

rule is not universal, and there is respectable authority to the contrary—and perhaps in many of the cases in which the rule is thus stated, it was unnecessary to consider the question of the legal title, since in the particular case, the legal title had in fact passed. But an equity may be cut off not only by a conveyance of the legal title to a *bona fide* purchaser, but by the circumstance that the later claimant occupies the position of holder of a superior equity—as by estoppel or other inequitable (or less equitable) position occupied by the earlier claimant. Thus, one who has contracted for the purchase of real property, and has paid all the purchase money before receiving notice of a prior equity, has been held in a well considered Virginia case, to have the better right to call for the legal title than the holder of the earlier equity, and hence entitled to priority in the trust *res*.[3] The ruling becomes more significant in view of the narrow rule prevailing in Virginia that legal title cannot pass by equitable estoppel.[4]

The generally accepted rule that where a stranger purchases at a judicial sale, land in which another has an interest (as, for example, a mortgagor), under an oral promise of the purchaser to hold for the promissee on certain conditions, is justified by the author rather under the doctrine of constructive trusts implied to prevent unjust enrichment of one person at the expense of another, than on the ground of fraud. This is probably a sound principle. But a distinction may be made here, and relief granted on another quite satisfactory ground. Where the oral promise is in the nature of a mere option to the promissee to repurchase within a given time, the contract would seem simply to be an oral option for the purchase and sale of real property, and therefore well within the statute of frauds—and certainly presenting a less clear case for relief than where the promissee has bound himself unequivocally to repay the purchase money at a definite time. In the latter case, the transaction is tantamount to a loan by way of advancement of the purchase money, by the promissor to the promissee, and hence the money paid is in fact the promissee's money. If so, then there is presented the typical case of a resulting trust—the purchase money paid by one person (the promissee, through the agency of the promissor) and title taken in another (the promissor).[5]

The proposition (p. 288) that even without the aid of statute, on the appointment of a new trustee to fill a vacancy, legal title vests in the new trustee by force of the order of the court, is out of harmony with the rule that a decree in equity operates only on the conscience of the defendant ("equity deals with the individual") and therefore cannot, *ex proprio vigore*, transfer legal title from one person to another—and hence that wherever transfer of legal title is required in execution of a decree, a conveyance is necessary, either by the holder of the title or by a master in his behalf.[6]

The subtitle *Who is a Purchaser* (p. 519) should read *What Constitutes*

[3] Preston *v.* Nash, 76 Va. 1.
[4] Burtners *v.* Keran, 24 Gratt. 42.
[5] Kendall *v.* Mann, 11 Allen 15—though, as shown in monographic note 5 L. R. A. (N. S.) 123, the authorities here are not uniform.
[6] Proctor *v.* Ferebee, 1 Iredell Eq. (N. C.) 143, 36 Am. Dec. 34, note.

Value?—as more properly indicating the topic discussed. There is slight confusion of thought here. The term purchaser does not necessarily imply value paid. Technically, a donee or a devisee is a purchaser.

Professor Bogert's work conveys no suggestion of the potboiler or of amateurishness. The reviewer has found the task of reading for the purpose of this review not an irksome one. The style is singularly clear and self-contained, and portrays the rare gift of clear thinking combined with accurate and condensed expression, without loss of essentials. In adding this volume to its list of Hornbooks the publishers have distinctly dignified the series. One might well suggest that so excellent a performance deserves a more congenial and less adolescent companionship. The term hornbook (or handbook as on the title page) connotes more of legal porridge and less of good rib-roast than the volume affords. The reviewer, who for many years has been responsible for the teaching of the law of trusts to a considerable body of students, has nothing but praise for Professor Bogert's scholarly performance. As indicated, it is in no sense a mere legal primer for beginners, but deserves a favored place in every lawyer's library.

W. M. LILE.

University, Va.

BLUE SKY LAWS—Analysis and Text, by Robert R. Reed and Lester H. Washburn, of the New York Bar. (New York: Clark Boardman Co. Ltd., 1921, pp. xxvi, 172, 267a.)

The purpose of this volume is to bring together the statutes relating to the so-called "blue sky" laws of the thirty-seven states which have legislated on the subject. The authors have not attempted to go into any extended discussion of the merits of such laws nor have they passed upon the constitutionality of the acts according to the Federal and State Constitutions. They have, however, performed an invaluable work in collecting and "boiling down" these various "blue sky" laws, and have made it possible for those whose business might come within the purview of these acts to comply with such requirements and to conform to them.

The reason for the "blue sky" laws as declared by the United States Supreme Court is:

> "to protect the public against the imposition of unsubstantial schemes and the securities based upon them * * * to give a basis of judgment of the securities offered the purchasing public; assure credit where it is deserved and confidence to investment and trading; prevent deception and save credulity and ignorance from imposition, as far as this can be done by the approved reputation of the seller of the securities and authoritive information."

The authors briefly follow the history of the earlier acts, and as an example, offer outlines of the typical "blue sky" law, and include a discussion of the possible future development of such laws.